

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THOMAS MACLEOD,)	
)	
Petitioner,)	
)	
v.)	C.A. No. 04-11629-PBS
)	
DAVID NOLAN,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

For the reasons set forth below, the Court grants petitioner's request to proceed on appeal in forma pauperis (Docket No. 38).

BACKGROUND

On July 24, 2007, petitioner filed his Notice of Appeal of the denial of his habeas petition, see Docket No. 32, and the United States Court of Appeals for the First Circuit assigned it No. 07-2215. See Docket No. 36. On September 24, 2007, the United States court of Appeals for the First Circuit transmitted Macleod's motion to proceed on appeal in forma pauperis to this Court. See Docket No. 37.

Now before the Court is petitioner's Motion for Leave to Proceed In Forma Pauperis (Docket No. 38). In support of the motion, petitioner submitted an IFP application and affidavit accompanied by his prison account statement. Id.

DISCUSSION

Generally, "any court of the United States may authorize the commencement, prosecution or defense of any ... appeal ... without prepayment of fees and costs or security therefor, by a person who makes affidavit that he is unable to pay such costs or give security therefor." 28 U.S.C. § 1915(a)(1). A party that desires to proceed in forma pauperis on an appeal from the dismissal of a habeas corpus petition must typically file a motion with the district court and attach an affidavit explaining why the court should allow him to do so. See Fed. R. App. P. 24(a)(1).

Petitioner initially filed an Application to Proceed Without Prepayment of Fees. See Docket No. 1. However, the docket indicates the fee-waiver application was denied, see DOcket No. 3, and that the \$5.00 filing fee was subsequently paid. See Docket (Aug. 11, 2004 docket entry).¹

The instant motion reveals that petitioner is incarcerated at the Old Colony Correctional Center and his main source of income from prison employment (he earns \$1.50 per day). The prison account statement dated September 19, 2007, which accompanies his motion reveals a negative balance in his personal account (-\$0.63) and a balance of \$291.50 in his savings account.

¹Because petitioner's initial application to proceed without prepayment of fees was never granted, the Court will review the instant motion pursuant to Fed. R. App. P. 24(a)(1).

On this record, I find that petitioner is unable to pay the \$455 filing fee for his appeal and is entitled to proceed in forma pauperis.

ORDER

Accordingly, it is hereby

ORDERED, that petitioner's Motion for Leave to Appeal In Forma Pauperis (Docket No. 38) is granted; and it is further

ORDERED, that the Clerk transmit this Order as a supplemental record to the First Circuit Court of Appeals.

SO ORDERED.

October 12, 2007
DATE

/s/ Patti B. Saris
PATTI B. SARIS
UNITED STATES DISTRICT JUDGE